

COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

BAY STATE GAS COMPANY

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D.T.E. 01-107

INITIAL BRIEF
OF
ALLENERGY GAS & ELECTRIC MARKETING COMPANY, LLC

I. INTRODUCTION

This proceeding is the investigation by the Department of Telecommunications and Energy (the “Department”) into the propriety of the rates and charges set forth in tariff M.D.T.E. No. 2, filed with the Department, by Bay State Gas Company (“Bay State” or the “Company”), on December 19, 2001. By order dated December 21, 2001, the Department suspended the Company’s use of the proposed new rates and charges until July 19, 2002. The Company’s filing seeks to impose certain fees for services provided by Bay State to natural gas Suppliers (as defined in 220 C.M.R. 14.02) that provide natural gas commodity service to retail customers located on the Company’s local distribution system. AllEnergy Gas & Electric Marketing Company, LLC (“AllEnergy”) is a Supplier that serves retail natural gas customers on 28 distribution companies in the northeast, including the Bay State system.

Under the Company proposal, the following new fees would be levied on Suppliers:¹

- ?? \$0.60 per bill per month for Standard Passthrough Billing (220 C.M.R. 14.03(6)(c)1.);
- ?? \$1.50 per bill per month for Standard Complete Billing (220 C.M.R. 14.03(6)(c)2.);
- ?? \$0.10 per customer account per month for general pool administration;
- ?? \$10.00 each time a customer (i) switches Suppliers or (ii) moves from one of a Supplier's pools to another of the same Supplier's pools.

Exh. BSG-1, p. 1.

For the reasons set forth below, AllEnergy requests that the Department reject, at this time, the Company's proposed Supplier fees.

II. ARGUMENT

A. The Company's Proposal to Collect Supplier Fees is Premature.

1. The Department Has Not Yet Approved Supplier Fees.

In presenting its filing at this time, Bay State ignores the Settlement on Model Terms and Conditions, D.T.E. 98-32, between the ten local distribution companies ("LDC") and a group of Suppliers, filed with the Department on July 10, 1998. Bay State presents its case as a compliance filing, when in fact the fee language in the Model Terms and Conditions was essentially a placeholder in recognition that further Department guidance as to the policy issues underlying Supplier fees was necessary. Settlement Filing, D.T.E. 98-32, § 2.14 ("With regard to Appendix A [which specified the fees], the Settling Parties agree that action is required by the Department prior to further discussion and action by Collaborative participants.") In approving the Settlement, the Department

¹ The Company also seeks to collect expenses related to telemetry installation directly from customers who require telemetry. Exh. BSG-1.

acknowledged this gap in the Model Terms and stated:

The Settling Parties maintain that fees and charges for billing services or for customer information, enrollment, and aggregation services cannot be established until the provisions for such services have been approved by the Department and that suppliers' fees are beyond the scope of the Model T&Cs.

...

Finally, regarding Appendix A, Schedule of Administrative Fees and Charges, the Settling Parties have agreed that action is required by the Department prior to further discussion and action by the Collaborative.

D.T.E. 98-32-A, pp. 5, 10 (1998).

The Department has not yet evaluated and approved the concept of the Supplier fees proposed by Bay State. The Company's filing should be deferred until such time as the Department investigates and makes policy determinations associated with Supplier fees.

2. Supplier Fees Are More Appropriately Recovered Through Base Rates.

The Department has indicated that recovery of costs incurred to provide Supplier services are appropriately recovered through a utility's base rates. The Department also held that recovery of costs associated with providing services to Suppliers, which can only be provided by the utility because it is the custodian of underlying customer data, should not occur through charges to Suppliers. In Competitive Market Initiatives, D.T.E. 01-54-A (2001), the Department stated:

Finally, we address the recovery of costs associated with compiling the [Customer Information] Lists and making them available to suppliers. Although we recognize that distribution companies incur certain costs associated with compiling, maintaining and distributing these lists, the distribution company is the custodian of the customer's data. As such, the dissemination of Customer Information Lists is a service that can only be provided by the distribution companies. Making the Customer Information Lists available is a service that provides benefits to all distribution companies' customers. A base rate proceeding pursuant to

G.L. c. 164, § 94, would be a more appropriate venue to investigate recovery of these costs. Therefore, the Department directs the distribution companies to make the Customer Information Lists available at no cost to suppliers.

D.T.E. 01-54-A, p. 24 and n.16.

Similarly, in the case at bar, Bay State is the custodian of the information necessary to provide these services – metered billing data, pool administration, effectuating switches in and out of Supplier pools – services to which Bay State requires Suppliers to subscribe as a condition to providing natural gas to retail customers on its distribution system. The Department should order the Company to defer its attempt to recover these costs until its next base rate proceeding.

B. The Company's Proposal Amounts to a Single-Issue Rate Case.

The Company proposes only to recover certain additional costs associated with information technology and administrative support services associated with providing these Supplier services. In essence, the Company has presented the Department with a single-issue rate case. The Department has repeatedly rejected attempts to adjust rates for single issues. See Mass-American Water Company, D.P.U. 95-118, p. 175 (1995); Fitchburg Gas and Electric Light Company, D.T.E. 97-115/98-120, p. 39 (1999); New England Tel. & Tel., D.P.U. 97-18-A, p. 8 (1997); Housatonic Water Works, D.P.U. 95-81, p. 3 (1996); Boston Edison Company, D.P.U. 92-23/92-24 (1992). Before ordering a change in rates, the Department must consider the full cost of service of the Company and the impacts of proposed known and measurable adjustments. Single issue rate cases do not afford the same regulatory protections as a base rate case wherein the Department and parties have the opportunity to investigate and review other areas of the Company's operation and cost of service for offsetting efficiencies or savings to mitigate proposed

costs and ensure that costs are not being doubly recovered. By its proposal, Bay State seeks to avoid the Department's and other parties' review under a comprehensive set of rules, procedures and regulations that are designed to provide due process protections and ultimately allow for the determination of just and reasonable rates and charges. Bay State's proposed course of action also ignores the regulatory compact whereby increases in costs are absorbed by the utility and decreases in costs inure to the benefit of a utility between rate cases.

To put the Company's request into perspective, Bay State's overall cost of service for distribution/transportation services for the period ending September 1998, was \$114,292,653. Exh. AE-3. Under the proposal now before the Department, Bay State asks the Department to take well-established regulatory policy and turn it on its ear to collect less than \$100,000 per year (or 0.08 percent of its cost of service) from Supplier fees. Exh. BSG-1, Appendix A. Clearly, Bay State's earnings will not be dependent on revenues from the proposed fees.

C. The Company has not met its Burden of Proving that the Proposed Supplier Fees are Just and Reasonable.

The Department, in making a determination of the propriety of the rates and charges proposed to be reflected in a utility tariff, must determine that the proposed rates are in the public interest. G.L. c. 164, § 94. Under Massachusetts law, a party seeking a change to existing rates carries the burden of proving that the new rates are just and reasonable. Fryer v. Department of Public Utilities, 374 Mass. 685, 690 (1978). In part, the determination as to whether proposed rates are just and reasonable hinges on whether the proponent of the new rates and charges has established that the changes in costs underlying its proposed rates and charges are known and measurable. A change is

“known” if it has actually occurred, while a change is “measurable” if it is quantifiable on the record evidence. Dedham Water Company, D.P.U. 84-32, p. 17 (1984). AllEnergy submits that in the instant proceeding, Bay State has failed to make the requisite showing.

Bay State is proposing to recover costs that may be classified as either information service costs or transportation service costs. Since Bay State had a fully active transportation program, which served many more customers in 1999 than it serves today (Exh. AE-13), the Company was likely to have been experiencing transportation program or information technology costs at the time of its last rate settlement in 1999. Bay State has provided no cost of service data that would establish what, if any, deficiency exists since the 1999 settlement. Moreover, AllEnergy, requested information that would have illuminated the level of these costs already embedded in rates and also information relating to the added costs for these services of which Bay State here petitions for recovery. Exhs. AE-3 through 5. Additionally, AllEnergy sought information relating to the benefits that may accrue to all of the Company’s ratepayers as a result of unbundling. Exhs. AE-7, 16, 17. Bay State’s witness, Mr. Ferro, stated that these inquiries were irrelevant and refused to provide the requested data. Exhs. AE-3 through 5, 7, 17. The information, had it been produced, may have yielded some record evidence on which an informed inquiry into the propriety of the proposed Supplier fees could have been made. As it stands, Bay State, by its stated position, has kept the established regulatory process from functioning as it should.

Bay State claims that the costs for Supplier services are “incremental.” Exh. BSG-1. On the record as it now stands, this determination cannot be made. The relevant

question – “incremental to what?” – cannot be answered without first examining what costs are already embedded as a result of a utility’s most recent rate order.

The Company has implied that its information technology costs have decreased since it merged with NiSource in February 1999. In response to an inquiry by the Division of Energy Resources, Bay State responded:

The derivation of costs associated with the Standard Complete Billing service is based upon the Company’s consolidated systems activity, which includes any of the activity required to support Bay State and Northern Utilities Such consolidation can only serve to reduce unit costs due to any gains in economies of scale.

Exh. DOER-6.

Post merger, Bay State’s billing function has been centralized with that of its parent, NiSource. Such steps typically are taken if they result in cost savings over what costs would be for two companies operating independently. This alone raises the questions as to the appropriateness of the Company’s request.

D. The Proposed Fees.

As a threshold observation, AllEnergy believes that proposed Supplier fees may present a serious barrier to competition. The Company asserts that the fees are designed to ensure that they are borne by the beneficiaries of the services (i.e., Suppliers) without discouraging market participation. Exh. BSG-1, p. 2. This statement ignores the broader fact that Suppliers are not the only intended beneficiaries of competition and, therefore, should not be singled out to shoulder costs needed to make the competitive market function. Second, the Company has offered no evidence to support its assertion that market participation will not be discouraged.

Furthermore, the number of Suppliers competing for business on Bay State's system is decreasing. Exh. AE-9. Adding costs to Suppliers will make Bay State's market less attractive to Suppliers. Bay State should not be erecting barriers to participation at a time when the nascent market for small customers is still struggling. In Competitive Market Initiatives, D.T.E. 01-54, the Department is currently investigating proposals to encourage competition in the electric industry. The Company proposal appears to be contrary to the policy direction being pursued by the Department on the electric front.

1. Switching Fees

The Company proposed a switching fee of \$10.00 that would be assessed to a Supplier whenever a customer switched Suppliers or was transferred from one pool to another pool of the same Supplier. Exh. BSG-1, pp. 4-5. The Company has stated that the fee would do double duty: it would act as a deterrent to slamming and it would cover some administrative costs associated with switching a customer from one pool to another.

The Company has provided no evidence that the fee would be a deterrent to slamming. Moreover, that the Department has extensive regulations pertaining to slamming (220 C.M.R. 14.06) renders the Company's proposal redundant and unnecessary.

The Company was not able to quantify what percentage of the fee is attributable to the administrative costs and what percentage to the deterrent function. As discussed in section C, above, a utility must demonstrate that its costs are known and measurable before it may be permitted to recover them. The Company has failed to do so.

The Company proposes to keep the revenue from the switching fee. Exh. AE-11. This ratemaking treatment is not consistent with the ratemaking treatment for other penalties collected by LDCs. For example, transportation penalties have been returned to all of a utility's customers through the local distribution adjustment charge ("LDAC"). If a portion of the fee is truly meant to be a deterrent, then Bay State should not be allowed to profit from this revenue. This is particularly so where there is no associated cost to the Company.

2. Pass-Through Billing Fee.

The required pass-through billing fee is unwarranted. Customers are already paying for billing services and Bay State's acquisition of metered data through their base rates. Increases and decreases in costs are part of the normal ebb and flow of costs between rate proceedings. There are no alternatives for Suppliers to the Company's billing data. Although Bay State purports that there are other providers for this data, there are in fact no viable alternatives. Exh. DOER-4; Tr. at 81-82. Bay State's premise resides in the theoretical, not the real world. If there are viable alternatives, then why is Bay State making the Pass-Through Billing Fee a required fee? See Exh. BSG-1, Appendix B. There is only one viable holder of customer data, and that is the LDC. Because Bay State is the custodian of customer data, and because competition provides benefits to all distribution customers, costs for pass-through billing should be recovered in Bay State's base rates.

3. Pool Administration Fee.

As with the pass-through billing service, Bay State is the only entity that can practically provide pool administration services. Pool administration is required to

administer the Company's terms and conditions for transportation service. As discussed above, the Company was performing pool administration functions at the time of its 1999 rate settlement. Some level of these fees are likely to already be embedded in the Company's rates.

E. The Department Should Subject Bay State's Provision of Supplier Services To Service Quality Indices.

If the Department allows the Company to collect Supplier fees, then, at a minimum, the Department should subject the provision of these services to a service quality index ("SQI"). A fee for service implies performance obligations. Since there are no providers for these services other than the LDC, the Department should look to performance based ratemaking and SQIs, in particular, to ensure that service quality does not degrade for these essential services. Presently, Bay State is subject to SQIs for services that it provides to its residential, commercial, and industrial customers. Tr. at 79-80. The services subject to the service call SQI range from emergency response to appliance repair calls. Id.

F. Bay State Should Be Required To Implement The Functionality Embodied In The EBT Report.

On March 22, 2000, the MGUC filed with the Department its Electronic Business Transactions ("EBT") Report. Pursuant to 220 C.M.R. 1.10(3), the Department has incorporated the EBT Report into the record of this proceeding. The MGUC envisioned that the transaction rules embodied in the EBT Report would eventually be implemented by an Electronic Data Interchange ("EDI") system. Tr. at 65-66. The Company has delayed the implementation of EDI; in the meantime it relies on a web-based system to transmit data between itself and Suppliers. Tr. at 67-68. Significantly, the Company's

web-based system does not implement the functionality embodied in the EBT Report.

Exh. AE-21. AllEnergy believes that the Company's system is cumbersome to use and inefficient. Some examples include:

- ?? Separate pool addition and drop confirmations are not provided. Suppliers must search the entire web list to determine whether a new customer is included on the day expected, or if a customer was terminated on the day expected. Tr. at 72-74.
- ?? Bay State does not provide a specific anticipated start date for new switches into a Supplier's pool. Tr. at 74.
- ?? Bay State does not provide drop transactions with reason codes for the drops to a Supplier's pool where the Supplier did not initiate the transaction. Tr. at 70, 76. Again, the Supplier must search the entire list to see if there are any customers missing that were not expected, and if any are found, then call Bay State to determine the circumstances of the drop.

These are significant departures from the functionality specified in the EBT Report. AllEnergy believes these deficiencies lead to additional administrative costs and inefficiencies about which Bay State complains. Exh. AE-18, part c; Tr. at 15. Before the Company is allowed to recover costs associated with providing Supplier services, it must demonstrate full compliance with the EBT Report.

III. CONCLUSION

AllEnergy does not deny that Bay State is entitled to recover costs associated with providing Supplier services. AllEnergy does, however, believe that the better course of action would be that the recovery of the costs associated with the proposed Supplier fees be deferred until the appropriate time. Specifically, in a base rate proceeding the proper level of costs ascribed to competitive services could be examined in the context of the quality of the service provided, the relative level of like costs already being recovered through the cost of service, and the appropriate ratemaking treatment of such costs. The Company proposal is also premature given the important and yet-to-be-answered policy questions surrounding Supplier fees.

WHEREFORE, for good cause shown, AllEnergy respectfully requests that the Department reject the Company's proposed Supplier fees.

Respectfully submitted,

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